

In Docket No. 1,026,826, the claimant alleged a series of repetitive traumas beginning July 22, 2004, and continuing through her employment with respondent. In Docket No. 1,026,827, the claimant alleged a series of repetitive traumas beginning

October 18, 2005, and continuing through her employment with respondent. The two claims were consolidated for hearing.

The ALJ found claimant sustained a 15 percent permanent partial impairment to the right lower leg in Docket No. 1,026,826 and a 40.7 percent work disability in Docket No. 1,026,827.

Respondent requested review in Docket No. 1,026,827. Claimant requested review in both Docket Nos. 1,026,826 and 1,026,827. On October 23, 2008, the parties entered into a settlement in Docket No. 1,026,826. Consequently, the request for review in Docket No. 1,026,826 will be dismissed by agreement of the parties.

In Docket No. 1,026,827, respondent argues that claimant failed to meet her burden of proof that she suffered any permanent impairment as a result of her work-related injury. In the alternative, respondent argues if claimant is entitled to a work disability a wage should be imputed because she failed to make a good faith effort to locate employment.

Conversely, claimant argues that she met her burden of proof to establish that she suffered permanent impairment to her back as a result of her work-related injury. And she made a good faith job search which entitles her to a 100 percent wage loss for that portion of the work disability formula.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Docket No. 1,026,826

The ALJ issued an Award dated September 15, 2008, in Docket No. 1,026,826, for a 15 percent permanent partial impairment to the right lower leg. On September 30, 2008, the claimant filed an application for review with the Board. On October 23, 2008, a settlement hearing was held and the parties resolved the claim in Docket No. 1,026,826. At oral argument before the Board, the claimant agreed that the request for review in Docket No. 1,026,826 should be dismissed. The Board finds that because this claim was settled on October 23, 2008, and upon agreement of the parties, the claimant's application for review is hereby dismissed.

Docket No. 1,026,827

Initially, the Board must address the issue whether the ALJ considered the entire evidentiary record. As previously noted, in Docket No. 1,026,827 the parties filed a joint stipulation regarding reports from Dr. Pat D. Do. That stipulation was not listed as part of the evidentiary record in the ALJ's Award. Moreover, the stipulation was not included as part of the administrative file forwarded to the Board from the ALJ's office.

Claimant was examined and evaluated by Dr. Do on September 11, 2006, pursuant to a court-ordered independent medical examination. The doctor's report of that examination was filed with the ALJ and referenced in the Award. But after receipt of the report both parties had sent letters to the doctor requesting clarification of his causation opinion and the doctor responded by letters dated November 23, 2006, April 3, 2007, and April 5, 2007.

At oral argument to the Board, the parties were asked about the letters because they were mentioned in the parties' briefs to the Board but, as previously noted, were not part of the evidentiary record. Counsel noted that they had filed a Stipulation, dated May 15, 2008, including as part of the evidentiary record, the additional letter reports counsel had received from the court-ordered independent medical examiner, Dr. Do. A file stamped copy of the Stipulation was forwarded to the Board by facsimile on December 3, 2008, the date of oral argument to the Board.

The Stipulation was filed May 15, 2008, and the ALJ's Award was dated September 15, 2008. It does not appear that the ALJ considered the entire record as the stipulation was neither listed nor included in the evidentiary file forwarded to the Board upon the parties' request for review. Moreover, the Award does not reference the letters from Dr. Do. Accordingly, this matter is remanded in order to allow the ALJ to consider that stipulated evidence.¹

AWARD IN DOCKET NO. 1,026,827

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Thomas Klein dated September 15, 2008, should be set aside and this matter remanded to the ALJ for consideration of the Stipulation dated May 15, 2008, and for such further proceedings as may be reasonable or necessary including a final determination of the claim.

AWARD IN DOCKET NO. 1,026,826

¹ The facsimile which the Board requested from the parties at oral argument has been included as part of the evidentiary record. The facsimile copy includes the stipulation and attached letters from Dr. Do dated November 23, 2006, April 3, 2007, and April 5, 2007, as well as the Independent Medical Examination Report filed stamped December 26, 2006.

WHEREFORE, it is the decision of the Board that because this claim was settled on October 23, 2008, the claimant's application for review is hereby dismissed.

IT IS SO ORDERED.

Dated this _____ day of December 2008.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Patrick C. Smith, Attorney for Claimant
Brenden W. Webb, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge